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IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THE 10th DAY OF AUGUST 1998

BEFORE

THE HON'BLE MR.JUSTICE H.RANGAVITTALACHAR

HRRP No.294,301 & 186/94

Between:

G.Shankar,
s/o.Gangadharappa,
Hindu, Major,
No.358/12, Upstairs,
6th Cross, Triveni Road,
Yeshwanthpur,
Bangalore - 22. .. Petr.in HRRP No. 294/94.

(By S.Shekar Shetty - Adv.)

Bansilal Nandakishore Vaishnav,
s/o.Choturam, Major,
Formerly residing at No.259,
S.C.Road, Yeshwanthpur,
Bangalore-22, presently residng at
No.358/12, 6th Cross, Triveni Road,
Yeshwanthpur, B'lore - 22,
represented by Special Power of Attorney
Sri.B.Nandakishore s/o.Bansilal. .. PETR.in HRRP
No.301/94 & 186/94.

(By Sri.B.V.Mallareddy - Adv.)

And:

Banilal Navakishore Vaishnav,
s/o.Choturam, Hindu,
Major,
r/o.No.259, S.C.Road,
Yeshwanthpur,
Bangalore - 22. .. RESPDT.in HRRP No.294/94

(By Sri.B,V.Mallareddy - Adv.)

G.Shankar,
s/o.Gangadharappa, Major,
r/o.No.358/12, 6th Cross,
Triveni Road,
Yeshwanthpur,
Bangalore - 22. .. Respdt.in HRRPs 301/94 &
186/94

(By Sri.S>Shekhar Shetty - Adv.)

These hrrps are filed u/s.50(1) of KRC Act, against

the order dtd.30.11.1993 passed in HRC.2815/87 on the file of the Small CAuses Judge, SCCH.12, Bangalore directing the respondent **in HRRP 294/94** to pay the arrears of rent within 30 days.

These HRRPs coming on for hearing this day, the Court made the following:

ORDER..

Q R D E R

All these 3 revision petitions arise against a common order passed by the learned Judge of the Small Causes in HRC No.2815/87.

HRRP No.294/94 is filed by the tenant against that portion of the order allowing the eviction petition of the respondent u/s.21(1)(h) of the Karnataka Rent Control (For short THE ACT) while HRRP Nos.186 & 301/94 is filed by the landlord against that portion of the order granting tenant time to pay the arrears of rent.

All these 3 revision petitions are disposed-off with reference to the ^{judgment in the} HRRP 294/94.

Respondents herein filed an eviction petition against the petitioner in respect of a residential house being a part of the I floor of premises bearing No.358/12, Yeshwanthpur, Bangalore on the ground that petitioner has a large family to accommodate.

The accommodation available to him is inadequate. The schedule premises herefore is required reasonably & bonafide for his own use and occupation. Besides it was also contended that the tenant had not paid the arrears of rent inspite of notice issued as per Sec.21(1)(a) of the act. This petition was resisted by the petitioner/tenant denying the requirements as neither reasonable nor bonafide, besides denying

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that he was due of any arrears of rent. Tenant also contended that the landlord is in vacant possession of an alternative premises situated at Yeshwanthpur which could satisfy his need, therefore there is no need to evict him. Parties went to trial and led evidence on ^{the basis} of their respective pleadings. Learned Judge of the Small Causes, Bangalore who enquired the eviction petition has allowed the petition u/s.21(1)(h) while dismissed the same filed u/s.21(1)(a).

On behalf of the landlord, one of his son has been examined as PW 1 and produced ration card and other documents in support of his case before the Court below. So also the tenant has examined himself as RW 1 and produced certain documents in support of his case. It has also to be stated that during the trial, the Court Commissioner was also appointed to inspect the schedule premises and also the premises which is alleged to be available to the landlord situated at Yeshwanthpur bearing No.1040; who has inspected the same and reported; Learned Judge of the Small Causes on the basis of the Ration Card, evidence of PW 1 has held that the landlord has to accommodate besides himself, his wife, 4 sons out of whom one is married, his family and 2 grand children, landlord also has married daughters. Learned Judge on the basis of the report

of the court commissioner has held that the accommodation available to him, is the premises in the ground floor at No.358/1 which consists of a shop, a pooja room, a hall and a kitchen, 2 rooms and a kitchen with a passage in the first floor, one room measuring 9½ ft. by 10 ft. while the other room measures 13.18 feet by 9 feet 11" and a hall, kitchen and a room in the 2dn floor. This accommodation having regard to the large family of the landlord is not adequate, therefore the learned Judge has come to the conclusion that the requirements of the landlord seeking occupation of the schedule premises is reasonable and bonafide.

Learned Judge ^{has} ~~is~~ repelled the contention of the tenant that landlord is in possession of vacant premises at No.1060/C, Pipeline, on the ground that it is in occupation of one Prema & Ganashyam. To come to this conclusion, learned Judge ~~has~~ relied on the ^{report} of the Commissioner. Learned Judge similarly has rejected another contention of the tenant that the landlord also is in possession of the premises at No.16/1, Gokul Extension ~~is~~ being without any substance.

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These findings cannot be faulted as they are based on evidence led by the parties. Though Sri. Shekar Shetty - learned counsel appearing for the petitioner submitted that there are discrepancies in the evidence of PW 1. Having regard to the Commissioner's Report and the evidence of PW 1, in my opinion, discrepancies shown are of no significance.

Learned Judge similarly has held that landlord suffers greater hardship than the tenant as according to him if eviction is refused, it would be virtually compelling the landlord to stay in insufficient accommodation for all times to come and suffer the inconvenience and hardship. Per contra, the tenant with some difficulty will be able to secure an alternative accommodation.

I agree with the said reasonings of the learned Judge.

Learned Judge has ruled out the feasibility of partial eviction on the ground that having regard to the requirements of the landlord and the dimension of the schedule premises, the same cannot be bifurcated.

These findings also cannot be faulted with.

I do not find any merit in this petition. Petition is liable to be dismissed and is dismissed

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accordingly.

HRRP Nos.186 & 301/94

These two revision petitions are filed by the landlord against that portion of the order rejecting his claim made u/s.21(1)(a). The landlord had issued a notice calling the tenant under Ex.P.2 to pay the arrears of rent upto 10.7.1987, rents being calculated @ Rs.200/-per month. According to the landlord, since the tenant ^{failed to comply with the notice,} with the tenant was liable to be evicted. Learned Judge has held in appreciation of the evidence led by the parties that the tenant had paid a sum of Rs.2000/- at the time he entered the tenancy. Landlord was only entitled to collect 2 months rent as advance, but landlord has collected Rs.1800/- in excess of the same. Subsequent to filing of the petition, the tenant has complied with the orders u/s.29(1). If the excess of advance amount paid by the tenant is given deduction to and taking into consideration the subsequent payment by the tenant, learned Judge has held that non-payment of the rents within 2 months has been sufficiently explained by the tenant. In that view, the learned Judge has dismissed the petition u/s.21(1)(a). However the learned Judge has determined the rents upto the date of the order the tenant is liable

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to pay @ Rs.2400/- and directed the tenant to pay the same on or before 30.12.1993. .

These findings cannot be held to be incorrect or illegal.

I do not find any merit in these 2 revision petitions also.

Accordingly all the 3 revision petitions are dismissed. .

At this stage, Sri.Shekar Shetty - learned counsel prayed that 3 years time may be granted to his client to vacate the premises.

Having regard to the facts and circumstances of the case, 2 years time from today is granted to the tenant to vacate the premises subject to the following conditions:

- (a) that the tenant shall file an affidavit undertaking to voluntarily vacate the premises on or before the expiry of 2 yrs.period from today. The said affidavit shall be filed within 4 weeks from today.
- (b) that the tenant shall pay the rents regularly.
- (c) that the tenant shall not sublet or sublease.

Sd/-
JUDGE

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